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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CRAIG WEIGHALL,

Plaintiff,

v.

LT. PEA, *et al.*,

Defendants.

Case No. C06-5663 RBL/KLS

ORDER DENYING MOTION FOR
ORDER OF DEFAULT

Before the Court is Plaintiffs' motion for an order of default against Defendant Lt. Pea. Dkt. # 65. Plaintiff states that his motion is made pursuant to Fed. R. Civ. P. 55, that "Lt. Pea, et al." has failed to appear, plead or otherwise defend the Complaint for affirmative relief against him, and that his motion is supported by affidavit. *Id.* Defendants object to the motion. Dkt. # 62.

Mr. Weighall filed his complaint on November 14, 2006. Dkt. # 1-2. Defendants filed their answer on December 22, 2006. Dkt. # 9. They filed a motion for summary judgment on March 22, 2007. Dkt. # 18. That motion was granted in part. Dkt. # 41. Defendants' second motion for summary judgment on Plaintiff's remaining due process issue is presently pending before the Court. Dkts. # 60, 61.

The record reflects that Defendants have appeared, answered, conducted discovery and filed

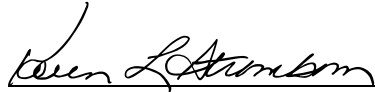
1 dispositive motions. Therefore, Defendants are not in default of an answer.

2 Accordingly, it is **ORDERED**:

3 (1) Plaintiff's motion for an order of default against Defendants (Dkt. # 65) is **DENIED**.

4 (2) The Clerk is directed to send copies of this Order to Plaintiff and counsel for
5 Defendants.

6 DATED this 5th day of February, 2009.

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9 Karen L. Strombom
10 United States Magistrate Judge
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